IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7215 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLABEN GORDHANBHAI THAKKAR - Petitioner(s)
Versus
BIJALBHAI LALLUBHAI VAGHELA - Respondent(s)

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Appearance :
MR RA PATEL for Petitioner No(s).: 1.

MR RD RAVAL for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2005

ORAL JUDGMENT

1. This petition is directed against the order passed by the Labour Court, Nadiad dated 17.12.1997 in Recovery Application No.30/88 whereby the said application was allowed and the petitioner herein w s directed to pay Rs.36000/- within 30 days

from the date of receipt of the said order.

2. The case of the petitioner is that the petitioner's husband had given a sum of Rs.8616.10 to the respondent by way of loan. Since the said amount was not returned, petitioner's husband filed Civil Suit No.160/87 before Civil Judge (J.D.), Kheda for recovery of the said amount. According to the petitioner, as a counterblast, the respondent filed Recovery Application No.30/88 before the Labour Court, Nadiad, against the petitioner's husband claiming legal dues from him under the I.D. Act. The Labour Court by order dated 17.12.1997 allowed the said application which is challenged in the present petition.

3. The learned counsel for the petitioner submitted that the evidence on record shows that the husband of the petitioner had expired on the date of notice and with the said specific remark the notice was sent back to the Labour Court. He submitted that in spite of this fact, the Labour Court proceeded exparte and passed the impugned order. According to him in fact the decree has been passed against a dead person which is a nullity in the eye of law.

4. Mr. R.D. Raval, learned counsel for the respondent submitted that he has no instructions in the matter.

5. As a result of hearing and perusal of the record it is evident that the petitioner's husband had expired on 20th November 1994 and endorsement to that effect was on record of the Labour Court as on 8th August 1997 and the decree came

to be passed on 17th December 1997. Moreover, even though the Labour Court is aware of the said fact, it proceeded with the matter exparte and passed the impugned decree. No reply has been filed controverting averments made in this petition. Therefore those contentions are required to be accepted. The the impugned order is, therefore, required to be quashed and set aside and the matter is required to be remanded to the Labour Court to decide the matter afresh.

6. In the premises aforesaid, the petition is allowed and the impugned order is quashed and set aside. The matter is remanded to the Labour Court for deciding the matter afresh in light of the observations made hereinabove. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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